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U.S. Department of Justice
Immigration and Naturalization Service

DEPARTMENT OF TRANSPORTATION

96 NOV 12 PM 2:07

OST-95-950-48

DOCKET SECTION

425 I Street NW.
Washington, DC 20536

NOV - 8 1996

Patrick V. Murphy
Deputy Assistant Secretary for Aviation and International Affairs
U.S. Department of Transportation

Dear Mr Murphy:

The Immigration and Naturalization Service (INS) has reviewed your proposed rulemaking, Notice 96-23, regarding mandatory collection of passenger manifest information as mandated by Public Law 101-604. We would like to take this opportunity to comment on your proposal.

In synopsis, your proposed regulatory requirement would apply two distinct passenger data collection standards to international air carriers. One data collection standard would apply to U.S. air carriers and another standard would apply to foreign air carriers. U.S. air carriers would be required to collect the full name, passport number and issuing country code (if a passport is required for travel) for all passengers arriving and departing the U.S. Foreign air carriers would be required to collect the full name and passport number (if a passport is required for travel) for arriving and departing U.S. citizens and lawful permanent residents of the U.S. only. Failure to provide this information would result in the passenger being refused boarding. Both U.S. and foreign air carriers would also be required to solicit the name and telephone number of a person or entity to be contacted in case of an emergency. Provision of this information would be voluntary and failure to provide it would not result in passenger being refused boarding.

The INS requests that the Department of Transportation (DOT) consider the following points prior to finalizing this proposed regulation.

1) In support of industry and government standardization we propose that the Advance Passenger Information System (APIS) become the vehicle used to satisfy the PL 101-604 manifest requirement.

As you are aware, the Federal Inspection Services (FIS) have been actively utilizing the APIS data system, a subsystem of the mainframe based Interagency Border Inspection System (IBIS) since 1990. We are convinced that this data system, increasingly becoming a standard with international air carriers, is by far the best solution to the passenger manifest

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issue. As a subsystem of IBIS, APIS has been designed to support the overlapping information requirements of over twenty government agencies.

Although airline participation in APIS is voluntary, the goal is for air carriers to collect information on all arriving passengers prior to boarding. The information is then electronically transmitted to the U.S. Customs Data Center in Newington, Virginia for processing while the flight is in the air. For carriers that are less automated, the government will provide stand alone computer software (PCAPIS) to facilitate the capture and transfer of the APIS information.

The recently enacted Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 has further mandated the Attorney General, together with the Secretary of State, the Secretary of Agriculture, the Secretary of the Treasury, and appropriate representatives of the airline industry to undertake a study and develop a plan for further automating arrival and departure data collection at ports-of-entry. This study will necessarily include a review of the information requirements of all affected agencies. The IIRAIRA has also tasked the INS with developing an automated entry-exit control system. It is foreseen that the electronic transmittal of manifest information in the form of advance passenger information (API) for international arrivals and outbound passenger information (OPI) for international departures, processed through APIS, will be the foundation for all future developments in these areas.

2) We propose that both U.S. and foreign air carriers be required to collect basic information for all passengers.

APIS provides enforcement, facilitation and automation benefits to the Government, the air carriers and the traveling public. The INS is committed to expanding the use of APIS and cannot support the imposition of any regulatory conditions limiting universal collection of certain passenger manifest data elements that are currently being collected through APIS. Specifically, we have serious concern with your proposal to waive manifest requirements entirely for nonimmigrant aliens traveling to and from the U.S. on foreign air carriers. Manifest information for nonimmigrants aliens traveling on all international flights is required by INS and is used extensively by many government agencies. The INS feels that the DOT should not mitigate, through this regulation, requirements for advance collection of passenger information that is considered essential to the missions of other agencies.

There is a body of information on all international travelers that must be provided to various government agencies at some point during the passenger clearance process. The proposed DOT regulatory requirement that basic information be collected prior to takeoff further favors APIS as the best solution for meeting international passenger data collection requirements. We see this requirement as a motivating factor which will increase air carrier participation in the APIS program. The DOT requirements, as well as the requirements of

the FIS agencies, are better served through expansion of APIS (a tested and proven system) to all international passengers on all U.S. destined flights.

3) We propose that the mandatory passenger information be expanded to include not only the passenger's full name, passport number and issuing country code (if a passport is required) but also the passenger's gender and date of birth, to comply with APIS requirements.

The inclusion of these additional data elements would further enable the law enforcement and intelligence communities to perform database checks in support of any investigation in the event of an aviation disaster. At the present time, the following basic passenger information can be collected for processing through APIS: passenger last name, first name, date of birth, gender, passport number and issuing country code, airline IATA code, flight number, departure location IATA code, U.S. arrival location(s) IATA code(s) and date of flight. Although the system has not been designed to capture the emergency contact name and phone number, this information could be included in APIS with only minor modification to the system.

4) We propose that the optional emergency contact information be a U.S. located emergency contact.

The INS already has a requirement to collect the U.S. destination address for nonimmigrant aliens at entry. It's possible that if the definition of emergency contact at § 243.3 were to be changed to "a person or entity in the U.S., that should be contacted in case of an aviation disaster," some foreign privacy concerns might be alleviated. In the event of an air disaster, the U.S. contact would be able to provide additional information or contact numbers. The INS could then modify its address requirements to accept the U.S. contact information. This would allow for further automation of passenger entry processing. As a result, passengers could be further facilitated through the inspection process upon arrival.

5) We propose that the provision of a waiver of compliance be removed.

The INS is concerned with the regulation's provision for a waiver of compliance with the proposed rule if a carrier has in effect a signed Memorandum of Understanding (MOU) concerning cooperation and mutual assistance following aviation disasters abroad. The INS believes that any waiver of the passenger manifest requirements will undermine the law enforcement and automation efforts of the FIS agencies.


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The true benefit of utilizing APIS to satisfy the PL 101-604 manifest requirements is the ability for the DOS to directly access the APIS manifest information through its existing interface with IBIS. By promoting APIS, the DOT could ensure that this information would be in the hands of DOS staff within seconds of receiving notification of an aviation disaster, rather than hours later.

We hope that this will assist you in your efforts. If you have any questions concerning the information above, please feel free to contact Assistant Chief Inspector Glenn Norton at (202) 305-4822.

Sincerely,


for Alexander Aleinikoff
Executive Associate Commissioner
for Programs